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EXAMINER

DIVECHA, KAMAL B

ART UNIT PAPER NUMBER

2151

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,092

Applicant(s)

SCHEER ET AL.

Examiner

KAMAL B. DIVECHA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/07/2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20020502.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

PD

DETAILED ACTION

Claims 1-24 are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) filed is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the method steps of claims 1-9 as claimed must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 3, 13 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 3, the term “approximately” in claim is a relative term which renders the claim indefinite. The term “approximately” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

As per claim 13, applicant has failed to state the intending teaching of the claim. It would be unclear to the one of ordinary skilled in the art what the applicant is trying to encompass.

As per claim 21, it is rejected for the same reasons as set forth in claim 3.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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2. Claims 10, 12, 15-18 and 23-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Abboud et al. (hereinafter Abboud, US 2002/0184484 A1).

As per claim 10, Abboud discloses an apparatus comprising a master configurer having logic to configure a digital image for a target server, build the digital image and deploy the digital image onto the target server (fig. 2, fig. 6 item #600 and pg. 3 block #36).

As per claim 15, Abboud discloses a system comprising a database to store one or more digital images of a server, one or more network topologies, and network configurations (pg. 5 block #55, pg. 6 block #61).

As per claim 16, Abboud discloses the system comprising a digital image building logic to deploy the digital image over a network connection in response to a broadcast request of the server to restore the digital image (pg. 5 block #56 and fig. 6 item #600, fig. 2).

As per claim 17, Abboud discloses the system wherein the master configurer comprises a server (fig. 1 item #100, fig. 2, fig. 6 and pg. 6 block #59-60).

As per claim 18, Abboud discloses the system wherein the digital image is deployed over a network connection onto the servers (fig. 2, pg. 5 block #54, 56 and fig. 6 item #600, pg. 6 block #58).

As per claims 12, 23-24, they do not teach or further define over the limitations in claims 10 and 15-18. Therefore, claims 12, 23-24 are rejected for the same reasons as set forth in claims 10, 15-18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-7, 9, 14 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abboud et al. (hereinafter Abboud, US 2002/0184484 A1) in view of Huang et al. (hereinafter Huang, U. S. Patent No. 6,735,548 B1).

As per claim 1, Abboud discloses a method comprising: configuring network settings for one or more servers in the network into a digital image, the configuration of the network settings based upon the design of the network (pg. 3 block #36); building the digital image for at least one of the servers in the network (pg. 2 block #15, pg. 5 block #50 and fig. 4B item #459); and deploying the digital image onto at least one of the servers in the network (pg. 2 block #16, pg. 3 block #32, 36 pg. 5 block #47, 51, pg. 6 block #61 and fig. 4A item #405), however, Abboud does not explicitly disclose the process of receiving a design of a network.

Huang discloses the process of receiving a specified network design topology from a network configuration tool (see abstract, fig. 7 item #80, col. 6 L30-31, col. 5 L60-63).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the

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invention was made to incorporate the teaching of Huang as stated above with Abboud in order to receive network design.

One of ordinary skilled in the art would have been motivated because it would have provided an automatic analysis of arbitrary network topologies (Huang, col. 1 L5-47). Secondly, one of ordinary skilled in the art would have been motivated because it would have provided a system that automatically re-configures servers with a new or different application and efficiently utilizing the limited number of available servers (Abboud, pg. 1 block #8, 12) and would have allowed re-usability of servers by re-configuring/re-purposing of the servers to a needed application (Abboud, pg. 3 block #32)

As per claim 2, Abboud discloses a system wherein the network comprises a server farm (pg. 1 block#7 and fig. 2).

As per claim 3, Abboud discloses the process of deploying (read as transferring or loading) two or more digital images at approximately the same time (pg. 5 block #56: describing unloading or deploying out and subsequently loading or deploying in the digital image to and from storage location such as a server on the network).

As per claim 4, Abboud discloses the process of producing an operational server farm (fig. 2 and pg. 3 block #37).

As per claim 5, Abboud discloses the process wherein created digital images includes network settings configured for an operational state (pg. 2 block #17, pg. 3 block #36).

As per claim 6, Abboud does not explicitly disclose the process of generating the network design. Huang discloses the process of producing a network topology (read as generating the network design, col. 2 L35-46). Therefore, it would have been obvious to a person of ordinary

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skilled in the art at the time the invention was made to incorporate the teaching of Huang as stated above with Abboud in order to generate the network design or topology. One of ordinary skilled in the art would have been motivated because of the same reasons as set forth in claim 1.

As per claim 7, Abboud discloses the process of dynamically building the digital image (pg. 5 block #49-50 and pg. 6 block #58).

As per claim 9, Abboud discloses the process of rebuilding the digital image for at least one server in the network and redeploying the digital image for the at least one server (pg. 5 block #52, fig. 6 item #600 and pg. 6 block #58).

As per claim 14, Abboud discloses a system comprising a graphic user interface (pg. 2 block #19), however Abboud does not explicitly disclose the process of generating a network topology for the network through graphic user interface. Huang discloses a system comprising a graphic user interface to generate the network topology for the network (fig. 1 item #106 and fig. 7 item #86, fig. 5-6 and col. 2 L35 to col. 3 L35). Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Huang as stated above with Abboud in order to provide user interface for generating a network topology. One of ordinary skilled in the art would have been motivated so that the user would have been able to create and adjust the topology or other parameters to allow for a quick comparison to alternative designs.

As per claim 19, Abboud discloses the system with master configurer that configures, builds and deploys the digital image without user intervention (fig. 6 and pg. 6 block#58, see abstract, pg. 1 block #12) and Huang discloses the process of receiving the network design (see abstract, fig. 7 item #80, col. 6 L30-31, col. 5 L60-63), however Abboud in view of Huang does

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not explicitly disclose the process of configuring, building and deploying digital images after receiving the network design. Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Abboud in order to enable master configurer to configure, build and deploy digital images after receiving the network design. One of ordinary skilled in the art would have been motivated because it would have identified and provided efficient utilization of the limited number of available servers.

As per claims 20-22, they do not teach or further define over the limitations in claims 1-7, 9, 14 and 19. Therefore claims 20-22 are rejected for the same reasons as set forth in claims 1-7, 9, 14 and 19.

1. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abboud et al. (hereinafter Abboud, US 2002/0184484 A1) in view of Huang et al. (hereinafter Huang, U. S. Patent No. 6,735,548 B1) and further in view of Haun et al. (hereinafter Haun, U. S. Patent No. 6,751,658 B1).

As per claim 8, Abboud in view of Huang does not explicitly disclose the process of deploying the dynamically built image over a network connection in response to a net boot request from a first server.

Haun, from the same field of endeavor, discloses the process of transferring the boot image over a network connection in response to a net boot request from a network client (a network computer or server, fig. 3 step# 355, 375, 380, 385 and col. 9 L9 to col. 10 L16). Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Haun as stated above with Abboud and Huang in order to transfer or deploy the boot image in response to a net boot request from a server.

One of ordinary skilled in the art would have been motivated because net booting approach greatly simplifies network computers client administration and provides a high level of reliability for the network computers and/or servers (Haun, col. 9 L33-36).

2. Claim 11 is rejected under 35 U.S.C. 103(a) as being obvious over Abboud et al. (hereinafter Abboud, US 2002/0184484 A1) in view of "Official Notice".

As per claim 11, Abboud does not explicitly disclose the teaching wherein the logic comprises a combination of electric circuits that follow the rules of Boolean Logic and software that contains patterns of instructions. But, the concept wherein the logic is a combination of electric circuits that follow rules of Boolean Logic and software that contains patterns of instructions is well known and obvious in the art. Therefore, Official Notice is taken to show that it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to disclose that the logic is a combination of electric circuits that follows the rules of Boolean Logic (hardware) and software that contains patterns of instructions. One of ordinary skilled in the art would have been motivated because logic is known as a combination of software and hardware.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being obvious over Abboud et al. (hereinafter Abboud, US 2002/0184484 A1) in view of Shwed et al. (hereinafter Shwed, U. S. Patent No. 5,835,726).

As per claim 13, Abboud does not explicitly disclose a system comprising a design rule logic block that contains instructions on how a component in the network can and cannot be employed in the network (as per applicants specification paragraph #23, the rule base includes a set of rules that govern what is and what is not allowed through the firewall).

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Shwed discloses a system (a firewall) comprising a rule base that includes set of filter language instructions that instructs the firewall how to handle both inbound and outbound communications (see abstract, col. 14 L54-65 and col. 9 L18 to col. 10 L22). Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to incorporate the teaching of Shwed as stated above with Abboud in order to provide a rule base that instructs a system how to handle the traffic.

One of ordinary skilled in the art would have been motivated because it would have provided security by controlling the traffic being passed, thus preventing illegal communication attempts in the networks (Shwed, col. 1 L39-43).

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Abboud et al., U. S. Patent No. 6,636,958 B2.
- b. Ludovici et al., U. S. Patent No. 6,567,849 B2.
- c. Wilde et al., U. S. Patent No. 6,066,182.
- d. Knox et al., U. S. Patent No. 5,978,911.
- e. Selitrennikoff et al., U. S. Patent No. 6,301,612 B1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Flex schedule 8 hr days (10.00am-6.30pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 01, 2005.


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER